Washington Gas Light Company *and* International Union of Gas Workers. Case 5–CA–18496

April 4, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

Upon a charge filed by the Union on November 14, 1986, the General Counsel of the National Labor Relations Board issued a complaint on March 24, 1987, against Washington Gas Light Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charge and complaint were duly served on the parties. On April 8, 1987, the Respondent filed an answer to the complaint, denying the commission of any unfair labor practices. On December 16, 1987, the Regional Director issued an amendment to the complaint, and on December 23, 1987, the Respondent filed an amended answer.[1]

On March 11, 1988, the parties filed a stipulation of facts and motion to transfer the case to the Board. The parties agreed that the stipulation of facts and attached exhibits constitute the entire record in this case, and that no oral testimony was necessary or desired by any of the parties. The parties further waived a hearing before an administrative law judge and the issuance of an administrative law judge's decision, and indicated their desire to submit the case directly to the Board for findings of facts, conclusions of law, and the issuance of an order. On October 6, 1988, the Board issued an order approving the stipulation and transferring the proceeding to the Board. Thereafter, the General Counsel, the Respondent, the Union, and the Intervenor filed briefs.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation incorporated in the District of Columbia and the Commonwealth of Virginia with various offices and places of business in the District of Columbia, the Commonwealth of Virginia, and the State of Maryland, where it is engaged as a public utility in the transmission, distribution, and sale of natural gas and related products. During the 12-month period preceding the execution of the stipulation, a representative period, the Respondent in the course and conduct of its business operations derived gross revenues in excess of $250,000 and purchased and received at its District of Columbia facilities goods and materials valued in excess of $50,000 directly from suppliers located outside the District of Columbia.

The parties stipulated, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Stipulated Facts*

The Respondent and the Union have entered into a series of collective-bargaining agreements, the most recent of which was effective from June 23, 1986, through May 31, 1989. Under article I of that agreement, the Union is recognized as the ''sole and exclusive bargaining agent'' for ''all employees of the Company who are included in the bargaining unit defined by the National Labor Relations Board in its Notice of Election . . . and Supplemental Decision and Certification of Representative dated August 4, 1967.'' At all times material to this case, the Union has been, and is, the exclusive bargaining representative of such employees under Section 9(a) of the Act with respect to rates of pay, wages, hours, and other terms and conditions of employment.

The parties' collective-bargaining agreement also contains a dues-checkoff clause, which authorizes the Respondent to withhold monthly union dues from the pay of any employee who executes a written authorization for such deductions in the form specified in the collective-bargaining agreement, and also authorizes the Respondent to forward the amounts deducted to the Union. On various dates prior to 1986, the Respondent received dues withholding authorization from the following individuals, each of whom was employed by the Respondent at a facility located in the Commonwealth of Virginia at all times material to this case: Richard G. Anderson, Einstein E. Caicedo, Albert W.

[1] On February 1, 1988, Deputy Chief Administrative Law Judge David S. Davidson granted employee Michael D. Stringfellow's motion to intervene for the purpose of representing his own interests in these proceedings. The Intervenor has objected to the judge's ruling not to allow him to represent the interests of other employees in these proceedings. As the judge noted, there is no evidence that those employees requested or authorized Stringfellow to represent their interests. For the reasons stated by the judge, we find no merit to the Intervenor's objection and affirm the judge's ruling.

[2] The Intervenor subsequently filed a statement of additional authority which argues that the complaint here should be dismissed in light of a March 6, 1989 Advice Memorandum asserting the General Counsel's position in a case regarding the revocation of dues-checkoff authorizations. The General Counsel filed an opposition to the Intervenor's submission. In view of our disposition of this case, we deny the Intervenor's motion to dismiss the complaint.

Currie, Edward R. Dearaway, John D. Duncan Jr., Robert L. McBride, Lester T. McDuffie, Lynn M. Moriarty, Warren S. Riley, Michael D. Stringfellow, James P. Thomas, and Sharon A. Wood.[3] Each authorization provided as follows:

> I, the undersigned, employee of the Washington Gas Light Company, and member of the International Union of Gas Workers, hereby request and authorize the Company to deduct from wages due me each month hereafter, union dues in accordance with and in the amount provided by the Constitution and By-Laws of the International Union of Gas Workers, in effect at the time of deduction, beginning with the month of _____. The amounts deducted under this authorization shall be paid promptly to the Treasurer of the International Union of Gas Workers.
>
> Unless or until such practice is declared by a court or governmental authority to be in violation of the Labor-Management Relations Act of 1947 as amended, this authorization shall remain in effect and shall be irrevocable, unless I revoke it by sending written notices to both the Washington Gas Light Company and the International Union of Gas Workers, by registered mail during a period of five (5) days immediately succeeding (a) the termination date of the collective bargaining agreement between such Company and such Union or (b) any yearly period subsequent to the date of this authorization, whichever occurs sooner in any year, and shall be automatically renewed as an irrevocable check-off from year to year, until duly revoked as herein provided, except that in the event that Section 302 of the Labor-Management Relations Act of 1947 shall be amended, modified, or repealed in such manner as to legally permit the same, this authorization shall thereupon become irrevocable without any of the limitations hereinabove set forth. This authorization is entirely voluntary on my part.

Each of the 12 employees named above became a member of the Union on or about the date that the employee executed a dues withholding authorization, except employee Sharon A. Wood, who joined the Union on or about March 30, 1984. The Union's membership application form, copies of which were executed by each employee, provided that:

> [d]esiring to become a member of the International Union of Gas Workers, I hereby apply for membership in that organization. I agree to be bound by the obligation of membership and the laws of the organization. I also understand that this, my application, is subject to acceptance by the International Union of Gas Workers. I also authorize the union to represent me in all matters of collective bargaining.

Between June 10 and 26, 1986, each of the 12 employees named above resigned from the Union. Subsequent to the date of their resignations, the Respondent received, from employees Anderson, Caicedo, Dearaway, Duncan, Moriarty, Stringfellow, Thomas, and Wood, documents requesting that the Respondent cease withholding union dues from their pay. The record does not indicate whether these employees provided the Union with written notice of these requests. During various subsequent periods of time, the Respondent has declined to withhold dues from the pay of these eight employees and—based on its belief and understanding that each had resigned from the Union—from the pay of employees Currie, McBride, McDuffie, and Riley as well.[4]

B. *Contentions of the Parties*

The General Counsel argues that the Respondent's collective-bargaining agreement required it to continue to withhold union dues unless and until the authorizations were revoked by written notice sent to the Respondent and the Union within 5 days after the collective-bargaining agreement's termination date or the yearly anniversary of the date the authorization was executed–-a condition which concededly was not satisfied in this case.

The General Counsel further argues that a dues withholding authorization is a contract between an employee and his employer and that a resignation of union membership ordinarily does not revoke a check-off authorization. Although the General Counsel agrees that an authorization is automatically revoked upon resignation from union membership if union membership was a quid pro quo for the authorization, the General Counsel argues that the authorizations at issue in this case do not fall within that exception because the authorization forms do not refer to union membership. The Charging Party generally makes the same arguments in support of the General Counsel's position.

The Respondent argues that it was not required to withhold dues from the pay of the 12 employees after they resigned from the Union. In this regard, the Re-

[3] The parties stipulated that employee Albert W. Currie was employed by the Respondent at one of its Virginia facilities at all times material to this case until he went on terminal leave effective November 1, 1986, followed by his retirement effective February 1, 1987, and that employee Sharon A. Wood was employed by the Respondent at one of its Virginia facilities at all times material to this case until her resignation from the Respondent's employ effective November 28, 1986.

[4] The periods of time for which dues were not withheld for each employee, as set forth in the parties' stipulation, are as follows: Anderson (October 1986 to present); Caicedo (May 1987 to present); Currie (July and August 1986, and November 1986 through January 1987); Dearaway and Moriarty (November 1986 to present); Duncan and Thomas (July and August 1986, October 1986 to present); McBride, McDuffie, and Riley (July and August 1986); Stringfellow (July 1986 to present); and Wood (September through November 1986).

spondent asserts that the reference in the authorization form to ''union dues'' and the signer's status as a ''member'' of the Union indicated that the payment of dues was a quid pro quo for union membership, citing *Eagle Signal Industrial Controls*, 268 NLRB 635 (1984). The Respondent also argues that, because Virginia is a right-to-work state in which compulsory dues payments are unlawful, the 12 employees' dues could only be a quid pro quo for membership in the Union.[5] Therefore, the Respondent claims that, as a matter of law, the authorizations were automatically revoked at the time the employees resigned their union membership. The Intervenor generally supports the Respondent's position.

C. *Discussion*

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,[6] the Board acknowledged judicial criticism of the *Eagle Signal* analysis[7] and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization even after resignation of union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must be clear and unmistakable.[8] In order to give full effect to these fundamental labor policies, the Board stated that it would

> construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing.* We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee had bound himself or herself to pay the dues even after resignation of membership. [302 NLRB at 228–229.][9]

Applying the analysis of *Lockheed* to the stipulated facts in this case, we find that the General Counsel has failed to show that the dues-checkoff authorizations the 12 employees signed obligated them to pay dues after they effectively resigned union membership. As in *Lockheed*, all that the 12 employees here clearly agreed to do was to allow certain sums to be deducted from their wages and remitted to the Respondent for payment of their ''union dues.'' They did not clearly agree to have deductions made even after they had submitted their resignation from union membership. We thus find that these partial wage assignments made by Richard G. Anderson, Einstein E. Caicedo, Albert W. Currie, Edward R. Dearaway, John D. Duncan Jr., Robert L. McBride, Lester T. McDuffie, Lynn M. Moriarty, Warren S. Riley, Michael D. Stringfellow, James P. Thomas, and Sharon A. Wood were conditioned on their union membership and were revoked when they ceased being union members. We therefore find that the Respondent's failure to deduct and remit monthly dues for these employees after they resigned union membership did not violate Section 8(a)(1) and (5) of the Act. Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

[5] Under the laws of the Commonwealth of Virginia, an employer may not, as a condition of employment or continuation of employment, require any person to: become or remain a member of a labor organization, abstain or refrain from membership in a labor organization, or ''pay any dues, fee or other charges of any kind to any labor union or labor organization.'' Va. Code 40. 1–58 et seq.

[6] 302 NLRB 322 (1991).

[7] See *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

[8] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

[9] In *Lockheed*, the Board left open the question of how its waiver rule would apply in the context of a lawful union-security provision. In the absence of a union-security clause requiring union membership here, the *Lockheed* test is applicable to this case.